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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,663	03/09/2004	Michael E. Daniels	ZIM0409	3929

7590 07/18/2007  
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EXAMINER
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RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
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3733

MAIL DATE	DELIVERY MODE
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07/18/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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<b>Office Action Summary</b>	Application No. 10/797,663	Applicant(s) DANIELS, MICHAEL E.	
	Examiner Anu Ramana	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3,5-8,10,12,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,5-8,10,12,22 and 23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/8/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3, 5, 8, 10, 22 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Coon et al. (US 2003/0158606 A1).

Coon et al. disclose an implant including: a tibial plate 202; a base 213 extending downwardly from the inferior surface of the tibial plate; an elongate member 204 having a radially projecting shoulder seated in a through channel of the base; an insert 206 removably engaged with a superior surface of the tibial plate; and a screw 236 extending through the insert and threadably engaged with the threaded socket of the elongate member (Fig. 19 and paras [0074]-[0078]).

The method steps of claims 22 and 23 are inherently performed when the Coon et al. device is implanted during knee arthroplasty.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coon et al. (US 2003/0158606 A1) in view of Delfosse (US 5,658,341).

Coon et al. disclose all elements of the claimed invention except for radially outward keel-like portions on base 213.

Delfosse teaches providing laterally extending ribs or "keel-like portions" on the base of a tibial plate for rigidity (Fig. 3 and col. 2, lines 45-51).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided laterally extending keel-like portions on the base of the Coon et al. device for rigidity.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coon et al. (US 2003/0158606 A1) and Delfosse (US 5,658,341), further in view of McCue et al. (US 6,506, 216).

The combination of Coon et al. and Delfosse discloses all elements of the claimed invention except for an explicit reference to the angle between the first and second keel-like portions to be "about 180 degrees." Fig. 3 of Delfosse suggests an angle less than 180 degrees between the first and second keel-like portions.

McCue et al. teach providing wing elements or "keel-like portions" on the keel or "base" 24 of a tibial tray or plate 12 at varying angles (Fig. 2 and col. 3, lines 29-36).

It is further noted that Applicant has not disclosed a criticality to the angle between the keel-like portions (see page 9, lines 7-8 of Applicant's Specification).

Accordingly, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide the first and second keel-like portions in the implant of the combination of Coon et al. and Delfosse at an angle of about 180 degrees because Applicant has not disclosed that providing a specific angle between the first and second keel-like portions provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected the implant of the combination of Coon et al. and Delfosse and applicant's invention, to perform equally well with either the angle taught by Delfosse or the claimed "about 180 degrees" because both angles would perform the same function of fixing the tibial plate to the proximal tibia.

***Response to Arguments***

Applicant's arguments submitted in the response filed on May 8, 2007 have been considered but are moot in view of the new grounds of rejection.

***Allowable Subject Matter***

The indicated allowability of claims 22 and 23 is withdrawn in view of the rejections made in this office action. The Examiner sincerely apologizes for any inconvenience caused to the Applicant by this action.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AR  
July 10, 2007

  
ANURADHA RAMANA  
PRIMARY EXAMINER  
TECHNOLOGY CENTER 3700